

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
2004 Biennial Regulatory Review	)	WC Docket No. 04-179
Regulations Administered by the	)	
Wireline Competition Bureau	)	

**AT&T REPLY COMMENTS**

Pursuant to the Commission's May 11, 2004 Public Notice (FCC 04-105), AT&T Corp. (AT&T) submits this reply to the comments filed by the Verizon Telephone Companies ("Verizon") in the Commission's 2004 comprehensive biennial review of regulations administered by the Wireline Competition Bureau ("Bureau") in accordance with Section 11 of the Communications Act (47 U.S.C. § 161).<sup>1</sup>

As it has in the past, Verizon once again seeks to convert the Commission's biennial review process into a vehicle for subverting major parts of the Commission's regime for the preservation of competition in accordance with the agency's statutory obligation under the Telecommunications Act of 1996.<sup>2</sup> Specifically, Verizon contends that the Commission should substantially eliminate Title II regulation

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<sup>1</sup> In addition to the comments filed by AT&T and Verizon in the initial comment cycle, the Kansas Corporation Commission ("KCC") also filed comments.

<sup>2</sup> In the 2002 biennial review, Verizon claimed that the Commission was required under Section 11 to conduct the equivalent of a new rulemaking proceeding to re-adopt each and every rule that the Commission desires to retain – failing which *all* such regulations would be deemed repealed by operation of law. The Commission rejected that extreme and untenable construction of its role under Section 11. *See The 2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, FCC 02-342 (rel. March 14, 2003 ("2002 Report"). The Commission's determination in the 2002 Report was affirmed on appellate review. *See Cellco Partnership, d/b/a Verizon Wireless v. FCC*, 357 F.3d 88 (D.C. Cir. 2004).

of broadband services provided by BOCs, including compliance with nondiscrimination obligations under the Commission's *Computer Inquiry* decisions.<sup>3</sup> Further, Verizon requests that the Commission "reform" pricing for unbundled network elements ("UNEs") by eliminating TELRIC rules.<sup>4</sup> As even Verizon is constrained to admit, its claims here "largely echo" those Verizon made in the 2002 biennial review."<sup>5</sup> In fact, Verizon's filing is almost a verbatim rehashing of its arguments in support of these proposals that it submitted to the Commission only this past April in the pending 2002 biennial review.<sup>6</sup>

The relief that Verizon requests in this proceeding should be rejected out of hand. As AT&T has previously demonstrated,<sup>7</sup> the appropriate forum in which the Commission should address such matters is through notice and comment rulemakings or

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<sup>3</sup> Verizon Comments at 6-24.

<sup>4</sup> *Id.* at 24-36.

<sup>5</sup> *Id.* at 1. In a notable display of hubris, Verizon as an afterthought has engrafted on its current comments an argument that the Commission "should move toward the elimination of *all* economic regulation" because competitive market forces in local exchange and other markets effectively constrain the prices that Verizon and other carriers may charge. *See* Verizon Comments at iii (emphasis supplied); *id.* at 3 and 36-37. Verizon's argument is bereft of support and asks the Commission to ignore the serious damage to emerging local competition that has resulted from the Court of Appeals' decision in the *Triennial Review* proceeding.

<sup>6</sup> Compare Verizon Comments in 2004 Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau, WC Docket No. 04-179, filed July 12, 2004, with Verizon Comments in 2002 Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau, WC Docket No. 02-313 ("2002 Biennial Review") filed April 19, 2004.

<sup>7</sup> *See* AT&T Reply Comments filed May 3, 2004 in 2002 Biennial Review at 3-4.

similar proceedings that allow for participation by all interested parties and for the Commission to compile a full record for decision.<sup>8</sup>

Indeed, the Commission has previously instituted such a rulemaking process with respect to regulation of the deployment of broadband services.<sup>9</sup> The Commission also already has pending before it a rulemaking on TELRIC pricing in which it has compiled an extensive record.<sup>10</sup> Additionally, Verizon in 2003 filed a petition requesting “forbearance” from cost-based UNE rates -- but in fact seeking promulgation of entirely new compensation and use restriction rules -- on which the

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<sup>8</sup> AT&T also demonstrated there that the *2002 Biennial Review* was an improper forum for Verizon to raise its indiscriminate attacks on broadband regulation and TELRIC pricing for the additional reason that the Commission’s *NPRM* was essentially limited to addressing certain specific proposals raised in the Bureau’s *WCB Staff Report*. See *Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau*, Notice of Proposed Rulemaking, WC Docket No. 02-313, FCC 03-337 (rel. January 12, 2004) (“*January 12 NPRM*”); *Wireline Competition Bureau, Federal Communications Commission, Biennial Regulatory Review 2002*, WCB Docket No. 02-313, CG Docket No. 02-390, Staff Report, DA 03-804, dated December 31, 2002 (“*WCB Staff Report*”).

<sup>9</sup> See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 02-33, 95-20 and 98-10, Notice of Proposed Rulemaking, FCC 02-42 (rel. February 15, 2002) (“*Broadband Rulemaking*”).

<sup>10</sup> *Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers*, WC Docket 03-173, Notice of Proposed Rulemaking, FCC 03-224 (rel. September 15, 2003) (“*TELRIC NPRM*”). In the pleading cycle on the pending *TELRIC NPRM*, AT&T alone has filed over 1,000 pages of comments and reply comments, with supporting declarations and other data. See AT&T Comments filed December 16, 2003; AT&T Reply Comments, filed January 30, 2004.

Commission requested and obtained extensive public comments.<sup>11</sup> And in the wake of the Court of Appeals' remand decision in the *Triennial Review* proceeding, the Commission is expected imminently to initiate a rulemaking to prescribe interim rules for UNE pricing. The Commission should refuse to countenance Verizon's latest attempt to misuse the biennial review process to subvert the Commission's process for evaluating in an orderly manner issues that are so critical to the preservation of competition in telecommunications markets.

Verizon's proposals for "specific rule changes" are equally meritless. Thus, Verizon asserts that the Commission should repeal, or modify significantly, many of its accounting and ARMIS reporting requirements, including the requirement that LECs maintain "Class A" accounts and report that information in their ARMIS filings; that Bell Operating Companies ("BOCs") maintain Cost Allocation Manuals ("CAM"), and that incumbent LECs maintain continuing property records.<sup>12</sup> These proposals are simply another attempt to stage an "end run" on the Commission's consideration of such accounting issues and related reporting requirements in other pending proceedings.

As Verizon acknowledges,<sup>13</sup> the Commission has convened a Federal-State Joint Conference on Accounting Issues ("Joint Conference") to provide a forum for

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<sup>11</sup> See Verizon's "Petition for Expedited Forbearance from the Current Rules for the Unbundled Network Platform," filed July 1, 2003; *Public Notice*, DA 03-2189 (rel. July 3, 2003)(requesting comments).

<sup>12</sup> Verizon Comments, Exhibit B at 2-6.

<sup>13</sup> *Id.* at 1-2.

improving the accuracy and completeness of accounting data for regulatory purposes.<sup>14</sup> The Joint Conference has recommended, and the Commission has adopted, certain changes to its accounting rules as a result of that proceeding. However, the Commission has declined to engage in wholesale repeal or adopt the substantial changes in those procedures that Verizon proposes here. To the contrary, less than two months ago the Commission released a decision in that proceeding adopting the Joint Conference's recommendation that it *reinstate* several Class A accounts that the Commission had previously ordered be eliminated.<sup>15</sup>

Similarly, the Commission in that decision implemented certain specific changes to the ARMIS reports, but it retained that reporting mechanism and even reinstated some ARMIS reporting requirements that it had previously ordered to be eliminated.<sup>16</sup> The Commission also there denied a petition filed by Verizon and other BOCs seeking reconsideration of a prior Commission order requiring *additional* reporting through ARMIS of information regarding broadband infrastructure.<sup>17</sup>

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<sup>14</sup> See *Federal-State Joint Conference on Accounting Issues*, WC Docket No. 02-269, Order, 17 FCC Rcd 17025 (2002).

<sup>15</sup> See *Federal-State Joint Conference on Accounting Issues, 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*, WC Docket No. 02-269, CC Docket Nos. 00-199, 80-286, 99-301, Report and Order, FCC 04-149 (rel. June 24, 2004)(“*June 24 Order*”).

<sup>16</sup> *Id.*, ¶ 53.

<sup>17</sup> *Id.*, ¶ 57.

These recent Commission actions underscore the mendacity of Verizon's claim that ARMIS reporting is unnecessary for regulatory purposes. ARMIS data are central to the implementation of virtually every one of the Commission's regulatory initiatives implementing the 1996 Act. As the Commission has explained:

“[W]e believe that continuing to require ARMIS reports . . . is necessary to provide us with the financial and operating data . . . to administer [the Commission's] . . . accounting, cost allocation, jurisdictional separations and access charge rules, and to preserve our ability to monitor industry developments and quantify the effectiveness of alternative regulatory proposals.”<sup>18</sup>

State regulators likewise rely on ARMIS data to carry out their obligations under the 1996 Act.<sup>19</sup> Not surprisingly, therefore, the KCC expresses concern in its comments that the elimination of such federal requirements could have a serious adverse impact on the ability of state commissions effectively to execute their oversight functions over carriers.<sup>20</sup> Verizon's proposal to dramatically curtail the scope of ARMIS reporting is thus not only out of place in the context of this proceeding, but also plainly wrongheaded as a matter of regulatory policy.<sup>21</sup>

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<sup>18</sup> See *Implementation of the Telecommunications Act of 1996; Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual*, 12 FCC Rcd 8071 ¶ 58 (1997).

<sup>19</sup> For example, some state commissions rely on ARMIS reports to determine incentives and penalties for price regulated LECs. See *1998 Biennial Review – Review of ARMIS Reporting Requirements; Petition for Forbearance of the Independent Telephone and Telecommunications Alliance*, 14 FCC Rcd 11443 ¶ 24 & nn.56, 58 (1999).

<sup>20</sup> See KCC Comments at 3.

<sup>21</sup> Verizon's proposed elimination of continuing property records by LECs likewise has no place in this biennial review; the *June 24 Order* expressly held (at ¶ 64)

(footnote continued on following page)

Verizon's proposal to "streamline" the Part 64 process by eliminating the BOCs' CAM reporting obligations is equally baseless. Echoing the Bureau's own prior similar finding,<sup>22</sup> the Commission in the *June 24 Order* reemphasized that annual CAM filings form part of the Commission's "safeguards in place to detect and deter anticompetitive conduct" by ILECs.<sup>23</sup> Verizon's unsupported claim (Exhibit B at 6) that preparation of these reports is "time-consuming and burdensome" is especially audacious in light of the Bureau's own prior finding that "arguments that the [Part 64] rules are onerous or otherwise burdensome are specious."<sup>24</sup>

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(Footnote continued from preceding page)

that the Joint Conference and the Commission will continue to study the need for any such recordkeeping changes in the context of that proceeding.

<sup>22</sup> See *WCB Staff Report* at 76 (finding CAM procedures "remain necessary in the public interest and therefore should not be eliminated or modified").

<sup>23</sup> *June 24 Order*, ¶ 39. See also *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II, Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, 80-286, 16 FCC Rcd 19913 ¶ 192 (2001) (*Phase II Report and Order*), (finding cost allocations rules "are increasingly important as more carriers diversify into competitive ventures").

<sup>24</sup> *WCB Staff Report* at 76. There is likewise no merit to Verizon's companion proposal (Exhibit B at 6) to eliminate Section 69.901(b)(4) of the Commission's rules, requiring ILECs annually to prepare a three-year forecast allocating central office equipment and outside plant between regulated and non-regulated usage of that investment. The Commission established that regulation for the specific purpose of precluding ILECs from imposing the costs and risks of their competitive ventures on interstate ratepayers. See *Implementation of the Telecommunications Act of 1996; Accounting Safeguards under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 ¶ 24

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Finally, Verizon's Swiftian "modest proposal" to amend the public notice requirements for ILEC network changes is another ill-disguised effort to eviscerate existing regulations protecting CLECs and their end users. Verizon suggests that the Commission permit ILECs to post notices of such changes on their Internet sites, but then couples that cosmetic procedural change with elimination of the current requirement that ILECs provide individualized notice of such changes to affected CLECs.<sup>25</sup> Far from diluting current ILEC notification obligations, additional bolstering of those requirements is imperative, as the Commission itself has already recognized.

Specifically, in the *2002 Biennial Review* the Commission has proposed amending its rules to require ILECs to add specific titles to identify notice of replacement of copper loops or subloops with fiber-to-the-home ("FTTH") loops.<sup>26</sup> This salutary change in present network disclosure practices will assure that CLECs, which receive an immense volume of information about changes in ILEC network configurations, will receive more timely and usable information about replacements that critically affect their ability to serve broadband customers. Additionally, as AT&T and other commenters

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(1996)(*"Accounting Safeguards Order"*). Moreover, it is apparent from Verizon's own argument that the regulation imposes no undue burden on LECs and, indeed, already allows those carriers wide discretion, simply by their choice of measurement, in determining the amount of non-regulated plant they report. See *Tennessee Cable Telecommunications Ass'n v. BellSouth Telecommunications, Inc.*, File No. E-97-10, Memorandum Opinion and Order, DA 00-864, ¶¶ 12-13 (2000).

<sup>25</sup> See Verizon Comments, Exhibit B at 8-10.

<sup>26</sup> See *January 12 NPRM*, ¶ 20.



showed in the *2002 Biennial Review*, effective notice of network changes requires that the Commission prescribe uniform labels for such notices by ILECs, and that the ILECs directly notify all potentially affected CLECs of such network changes and identify the specific circuits of each such carrier that would be affected by such changes.<sup>27</sup> Moreover, the Commission should prescribe uniform 90 day periods for both short- and long-term notifications and a 30 day period for CLECs to object to such network changes.<sup>28</sup>

Only with such modifications in current procedures can CLECs be assured of the opportunity to conduct an orderly analysis of ILEC notices, prepare filings with the Commission addressing those proposed network changes, and conduct any necessary planning for alternative service arrangements for their end users. Verizon's transparently self-serving Internet posting proposal for network notices serves none of these goals and is calculated simply to create greater uncertainty and disruption for CLECs and their customers.

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<sup>27</sup> See AT&T Reply Comments filed May 3, 2004 in *January 12 NPRM* at 6-10. Currently, the Commission's requirement for individualized notice to CLECs applies only to short-term replacements of copper loops.

<sup>28</sup> See *id.* at 9-10. As AT&T showed there, under current Commission rules CLECs have only 9 business days in which to object to notices of replacement of copper loops with hybrid facilities, even though CLECs are obligated to provide their customers at least 31 days' notice of a service discontinuance that may be necessitated by the replacement of copper facilities.

WHEREFORE, for the reasons stated above, Verizon's proposals for changes in the rules administered by the Bureau should be rejected.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Tracy Lea Rudnicki, do hereby certify that on this 11th day of August 2004, a copy of the foregoing "AT&T Reply Comments" was served by U.S. first class mail, postage prepaid, on the parties listed below.

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